1989

State of Utah v. Thomas M. Beckstead-Porter : Brief of Appellee

Utah Court of Appeals

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DOCKET NO. 89-0309 IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Respondent,	:	Case No. 890309-CA
v.	:	
THOMAS M. BECKSTEAD-PORTER,	:	Category No. 2
Defendant/Appellant.	:	

BRIEF OF RESPONDENT

APPEAL FROM CONVICTIONS OF AGGRAVATED ARSON, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-103 (SUPP. 1989), AND INSURANCE FRAUD, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-6-521 (1978), IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JOHN A. ROKICH, JUDGE, PRESIDING.

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BRIEF OF RESPONDENT

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from convictions of Aggravated Arson, a first degree felony, in violation of Utah Code Ann. § 76-6-103 (Supp. 1989), and Insurance Fraud, a second degree felony, in violation of Utah Code Ann. § 76-6-521 (1978). This Court has jurisdiction to hear the appeal pursuant to Utah Code Ann. § 78-2a-3(2)(j) (Supp. 1989).

STATEMENT OF ISSUE PRESENTED ON APPEAL

1. Whether there was sufficient evidence presented at trial to support the jury's finding that defendant was guilty of aggravated arson and insurance fraud?

STATEMENT OF THE CASE

Defendant, Thomas Beckstead-Porter, appeals from a judgment and conviction of Aggravated Arson, a first degree felony, and Insurance Fraud, a second degree felony, in violation of Utah Code Ann. §§ 76-6-103 (Supp. 1989) and 76-6-521 (1978), respectively (R. 134-36). Defendant was convicted after a jury

trial on August 5, 1988, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable John A. Rokich, Judge, presiding. Id. Judge Rokich suspended defendant's prison sentence and placed him on probation for a period of eighteen (18) months and ordered him to serve thirty (30) days in jail. Id.

STATEMENT OF FACTS

On the evening of November 1, 1987, a fire broke out in the basement of defendant's home in Salt Lake County (T. 123, 138). A neighbor called "911" at 10:31 p.m. (T. 269). The fire department arrived at approximately 10:38, had the fire under control by 10:44, and had the fire out by 10:52 (T. 271). The fire inspectors determined that the fire had burned approximately 15 minutes (T. 195). At the time of the fire, defendant was the only person present in the house (T. 500). Defendant's wife was in Phoenix, Arizona (T. 546).

The fire originated in a laundry room in defendant's basement (T. 155-56, 265). The room sustained heavy damage and had been subjected to a so called "flashover" (T. 266). A flashover occurs when everything in a room burns (T. 251, 266). The investigation revealed that the flashover occurred before the firefighters arrived (T. 272).

When the fire department arrived, one firefighter observed an iron in the laundry room in an upright position (T. 143, T. 150, 153). Andrew Glad, Assistant Fire Chief of the Sandy Fire Department, removed the iron from the laundry room because he thought it might have been involved with the fire (T.

156). No other immediate cause of the fire was observed (T. 156). Glad discovered the iron on the floor but observed that the ironing board had been moved on the night of the fire (T. 159, 162). The iron was still plugged into the electrical outlet (T. 168). Glad delivered the iron to Captain Dave Meldrum of the Sandy Fire Department (T. 156).

Captain Meldrum investigated the fire scene on November 4th (T. 240). In his investigation, he found no fire hazards outside the home (T. 244). Meldrum observed two broken windows to the basement of defendant's house. Id. He determined that both windows were broken either during the fire or shortly afterward based on the smoke stains on the glass (T. 247). At the time the firemen arrived, the basement door was locked with no signs of forced entry (T. 265).

In the laundry room, Meldrum observed burning which extended from the floor and across the ceiling (T. 272). Melted plastic on the ironing board indicated the heat from the fire came from above the ironing board (T. 273). Additionally, the rust patterns on the ironing board indicated that the top of the board received the most heat, while the plastic caps on the bottom of the ironing board did not completely melt, indicating minimal heat (T. 274).

Near this location, Meldrum discovered some strips of burned material, evidently part of a Halloween mummy costume made of bed sheets which defendant used few days previously (T. 165, 198, 267). Subsequently, the National Fire Academy in Washington, D.C., informed Meldrum that bed sheets ignite at a

temperature of 525 to 560 degrees (T. 275, 280). The plastic caps on the feet of the ironing board had an ignition temperature of 200 degrees, the lowest of any item in the laundry room (T. 290). Other burned materials in the room had much higher ignition points; for example, the wood had an ignition temperature of 800 degrees and the aluminum wiring 1210 degrees (T. 290-91).

At trial, Meldrum testified that fires could be ignited in three ways: acts of providence, accidents, or intentionally (T. 280). He discussed each possibility in turn. He defined a providential fire as one caused by "catastrophe, lightning, earthquakes, that sort of thing." (T. 281). He went on to say that "[s]ince we had no lightning strikes, no earthquakes, nothing else that would indicate a providential fire, we rules [sic] that out immediately." Id.

Meldrum also eliminated an accidental cause of fire. He excluded an electrical fire since no electrical source existed in the area of the fire origin (T. 281). He ruled out spontaneous ignition, accelerants, children playing with matches, cigarettes, natural gas leaks, and a malfunctioning water heater or furnace (T. 291-92).

He also determined the iron was not the source of the fire. He based his conclusion on several factors including the statements of an eyewitness that the iron was upright on the ironing board when the firefighters entered the room (T. 143, 150, 153, 282-84). Additionally, defendant told Meldrum that he had been in the room only a few minutes before the fire (T. 282).

Meldrum testified that an iron fire takes considerable time to ignite and produces a great deal of smoke which defendant would have noticed (T. 282). He further explained that an iron will start a fire only if it meets certain conditions (T. 282). First, the iron must be encapsulated in flammable material with no air flow (T. 283). He considered encapsulation unlikely in this instance because insufficient material existed to encapsulate the iron (T. 283).

As part of his investigation, Meldrum bought an iron identical to defendant's iron (T. 224, 284). Setting the thermostat on the new iron to a point identical to that on defendant's iron, the maximum temperature attained was 395 degrees (T. 234, 284, 286). The manufacturer confirmed the maximum temperature setting (T. 289). Meldrum testified that the iron could not radiate enough heat to travel three to four feet to melt the caps on the feet of the ironing board (T. 291).

His tests further indicated that the iron was on during the fire (T. 318). He discovered that the fire caused a short in the iron, but the short did not cause the fire (T. 287). He explained that the iron did not indicate the type of damage an iron fire would cause since an iron fire would be a smoldering, sooty fire (T. 286, 335, 381, 396). Based on his investigation and tests, Meldrum concluded that the fire was intentionally induced by a lighter or match on the Halloween mummy costume consisting of bedding material (T. 298).

Concurrently with Meldrum's investigation, James Ashby independently investigated the fire for defendant's homeowners

insurance company (T. 173). Ashby also determined that the fire started in the laundry room (T. 185-86). Because of the lack of damage to the face of the iron, Ashby discounted the iron as the source of the fire (T. 216). He testified that an iron fire would produce smoke which would in turn cause charring on the face of the iron (T. 220). He found no charring or black substance on the face of the iron. Id. He opined that the carpet in the laundry room had burned before the iron fell to the floor (T. 530-31). He based his opinion on the fact that only residue of previously burned carpet appeared on the edge of the iron. Id.

Ross Watson, an appliance repairman, testified that the iron involved in the fire had a safety feature designed to shut off the iron if the thermostat malfunctioned (T. 227). He also stated that he had not seen an overheated iron in ten to fifteen years (T. 228). He said that if the iron had overheated as the result of a manufacturer's defect, the bottom of the iron would have melted or bubbled (T. 228, 230).

Coincidently, defendant contacted his insurance agent just three days before the fire and attempted to change insurance companies from Farmers to Aetna and increase the coverage on his home from $64,000 to $70,000 (T. 74, 98-101). The day after the fire, defendant again contacted his insurance agent to make a claim on his new Aetna policy (T. 106). Defendant also filed a claim on his Farmers policy (T. 70). Two days before the fire, defendant disconnected the smoke alarm installed in his house (T. 548-49).

Defendant speculates that his dogs knocked over the iron sometime between 6:00 p.m. and 9:00 p.m., encapsulating it in his Halloween costume, and eventually causing the fire about 10:30 p.m. (T. 437, 512-14, 551, 582-83). He relies on the testimony of two experts from the State Crime Lab at Weber State College (T. 442, 465). The first expert, Art Terkelsen, testified that the melted material on the iron matched the burned carpeting as well as defendant's Halloween costume (T. 445). However, he could not determine whether the iron caused the fire (T. 453-54). He said that had the iron started the fire, there would have been scorching around the iron (T. 455-56, 459).

Defendant's second expert witness, Dwayne Moyes, testified that encapsulation could occur, producing heat in excess of 525 degrees (T. 471). Moyes encapsulated an iron in his lab at a temperature of 325 degrees and determined that smoke was produced only three to five minutes before ignition (T. 473-74). However, on cross-examination, he testified that he only heated the iron for a half an hour and then terminated the experiment because he did not want to risk a lab fire (T. 478-80). He explained that he calculated when the iron would have reached 525 degrees (T. 478-80). He also testified that the iron had "a bit of browning" from his experiment (T. 484).

SUMMARY OF ARGUMENT

The jury had sufficient evidence to convict defendant of aggravated arson and insurance fraud. The state called three expert witnesses to establish that the fire was not accidental, but intentional. The state also established that defendant

attempted to change his insurance company and increase the amount of his policy only a few days before the fire. If believed, the State's direct and circumstantial evidence was sufficient to establish all the elements of the crimes.

ARGUMENT

POINT I

SUFFICIENT EVIDENCE WAS PRESENTED AT TRIAL TO SUPPORT THE JURY'S VERDICT.

Defendant's sole argument on appeal is that the evidence at trial was insufficient to support the jury's verdict.[1] However, a review of the evidence reveals that defendants claim is without merit.

In reviewing a claim of insufficient evidence, the standard to be applied by an appellate court is narrow.

> [W]e review the evidence and all inferences which may reasonably be drawn from it in the light most favorable to the verdict of the jury. We reverse a jury verdict for insufficient evidence only when the evidence, so viewed, is sufficiently inconclusive or inherently improbable that reasonable minds must have entertained a reasonable doubt that the defendant committed the crime of which he was convicted.
>
> State v. Petree, Utah, 659 P.2d 443, 444 (1983); accord State v. McCardle, Utah, 652 P.2d 942, 945 (1982). In reviewing the conviction, we do not substitute our judgment for that of the jury. It is the exclusive function of the jury to weigh the evidence

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[1] It must be noted that defendant does not directly challenge the sufficiency of the insurance fraud conviction, apparently because it is dependent on the aggravated arson conviction. Simply, defendant's insurance claim of accidental loss would be fraudulent if he intentionally set the fire.

> and to determine the credibility of the witnesses . . . State v. Lamm, Utah, 606 P.2d 229, 231 (1980); accord State v. Linden, Utah, 657 P.2d 1364, 1366 (1983). So long as there is some evidence, including reasonable inferences, from which findings of all the requisite elements of the crime can reasonable be made, our inquiry stops.

State v. Booker, 709 P.2d 342, 345 (Utah 1985).

In the instant case, the jury convicted defendant of the offenses of aggravated arson and insurance fraud, which provide as follows:

> **76-6-103. Aggravated Arson.**
>
> (1) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfuly damages:
> (a) a habitable structure; or
> (b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

Utah Code Ann. § 76-6-103 (Supp. 1989).

> **False or fraudulent insurance claim--Punishment as for theft.**
>
> Every person who presents, or causes to be presented, any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance for the payment of any loss, or who prepares, makes or subscribes any account, certificate of survey, affidavit or proof of loss, or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used, in support of any such claim is punishable as in the manner prescribed for theft of property of like value.

Utah Code Ann. § 76-6-521 (1978).

In a similar case, the Utah Supreme Court explained that in reviewing the sufficiency of an aggravated arson and insurance fraud conviction, "it is a well-settled rule that

guilt of the accused." State v. Nickles, 728 P.2d 123, 126 (Utah 1986). "Circumstantial evidence need not be regarded as inferior evidence if it is of such quality and quantity as to justify a jury in determining guilt beyond a reasonable doubt, and is sufficient to sustain a conviction." Id. at 127.

Based upon the evidence presented at trial, the jury could infer that on the night of the fire, defendant waited until his father-in-law and brother-in-law left his house between 8:30 and 9:00 p.m. (T. 550), talked to his wife on the telephone from approximately 10:12 to 10:20 p.m. (T. 300-01), made sure the iron was plugged in and turned on (T. 318), and set the basement laundry room on fire by igniting his Halloween mummy costume (T. 398). Defendant then went to his neighbor's house and reported that his house was on fire (T. 121, 489-90).

The laundry room reached flashpoint before 10:38 p.m., when the fire department arrived (T. 272). Less than ten minutes had passed from ignition to flash point (T. 268). Peering through the window of the laundry room, a fireman observed the iron sitting upright on the ironing board (T. 142-43). Sometime during the salvage and overhaul stage, the iron was knocked from the ironing board to the floor where it was retrieved by Chief Glad and given to Captain Meldrum (T. 159, 160, 375).

The State's experts ruled out the iron as the cause of the fire for several reasons. First, the iron was in an upright position on the ironing board when the fire department arrived at the scene (T. 142-43). Second, defendant stated that he had been in the laundry room only minutes before the fire (T. 282).

Meldrum testified that it takes a considerable amount of time to ignite an iron fire and it would produce a great deal of smoke prior to ignition (T. 282). Third, an iron must be encapsulated in flammable material without airflow to obtain sufficient heat to ignite (T. 283). Meldrum testified that insufficient material existed in the area to encapsulate the iron. Id. Fourth, the maximum heat produced from the iron was insufficient to obtain the ignition temperature of the bed sheet material (T. 234, 275, 280, 284, 286, 289). Fifth, the fire was not ignited by an electrical short in the iron (T. 287). Sixth, the face of the iron lacked evidence of charring which would have resulted if the iron produced the fire (T. 216). Seventh, Ashby concluded that the carpet on the laundry room floor had burned prior to the iron falling to the floor (T. 530-31). Finally, Watson stated that the iron lacked melting or bubbling which would have occurred had the iron overheated (T. 228, 230).

Based upon the evidence, it could be reasonably inferred that: (1) defendant was the only person in the house at the time of the fire, and (2) the fire was not accidental but was intentionally set by human hands. While motive is not an element of the crime, the insurance proceeds provided a compelling reason for defendant to ignite his house on fire. Viewing the evidence in a light most favorable to the verdict, a jury could have reasonably concluded that defendant intentionally ignited his house on fire to collect the insurance money.

Defendant appears to further argue that the evidence was insufficient because some evidence, if believed, tends to

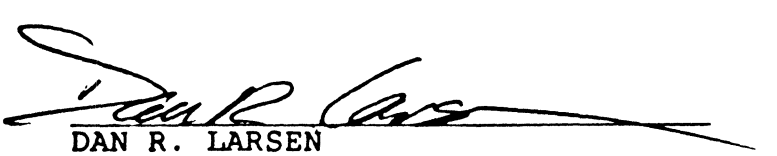
show that defendant did not commit the offense. In making this argument, defendant ignores the fundamental principle that a jury's belief or disbelief of a defendant's theory of a crime is a matter within the jury's exclusive prerogative to weigh the credibility of the witnesses' testimony. State v. Lamm, 606 P.2d 229 (Utah 1980); Efco Distrib., Inc. v. Perrin, 17 Utah 2d 375, 412 P.2d 615 (Utah 1966); Webb v. Olin Mathieson Chem. Corp., 9 Utah 2d 275, 342 P.2d 1094 (1959). The basic function of the jury is to weigh the conflicting evidence and draw conclusions from it. State v. Pierce, 722 P.2d 780 (Utah 1986). Merely weighing the number of witnesses is never dispositive. State v. Lafferty, 749 P.2d 1239, 1246 (Utah 1988), on reconsideration 776 P.2d 631 (Utah 1989). Despite testimony to the contrary, the jury could have found, beyond a reasonable doubt, that defendant committed the offenses of which he was convicted. State v. Petree, 659 P.2d 443 (Utah 1983).

CONCLUSION

Based on the foregoing, the State respectfully requests this Court to affirm defendant's convictions.

DATED this 30th day of October, 1989.

R. PAUL VAN DAM
Attorney General



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CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Respondent, was mailed, postage prepaid, to Kenneth R. Brown, attorney for defendant, 10 West 300 South, Suite 500, Salt Lake City, Utah 84101, this 30th day of October, 1989.